

John Quinn on Trials A Litigation Master Class Series

- Creating a strategy and timeline
 - Start early. Don't wait to just before the discovery deadline to start discovery.
 - Research the law. Once you know the law, can construct a theory and find evidentiary support.
 - Figure out the decisive issues: understand the elements that must be proven.
 - Build a case around the key facts and evidence that would be compelling to the jury.
 - Expert retention from the outset. Experts and consultants can help frame the issues, especially with fields in which lawyer has little subject matter expertise.

- Focus groups and mock trials
 - Test facts, stories, images, and graphics that resonate most with jurors.
 - Test credibility of expert witnesses or other elements of case strategy with focus groups.
 - Helps assess impact of evidence, presentation, and strategy.
 - Helps inform types of jurors for jury selection.
 - Show videotaped presentations to focus groups or mock jurors. Get real-time reactions and analysis. Analyze video-taped sessions to refocus
 - Focus groups/mock trials services companies can be retained. Can conduct focus groups internally with firm staff or temps.

- Depositions
 - Timing: consideration of when to time the deposition is part of the strategy— before, during, or after the interrogatories and documents requests. Sending out interrogatories and document requests can help obtain information to shape the deposition. On the other hand, conducting the deposition early on before the opposition has had a chance to prep their witnesses and evaluate their claims and evidence may give strategic advantage.
 - Questioning of witnesses
 - Don't reveal your strategy to the witness. If the witness figures out your strategy, may be much less willing to give up information. Ask broad questions to invite the witness to offer up information.
 - Consider the sequence of questions. In some sequence, chronologically, or jumping around?
 - Prepping your own client
 - No substitution for comprehensive preparation and practice.
 - Counsel's work is done in advance. Not much more counsel can do during a deposition besides objections. Objections only allowed if related to privilege or form.

- Settlement
 - Let the opposition know early on that any settlement talks are welcome.
 - Approaching a settlement is not a sign of case weakness or vulnerability.
 - Strategy of when to open settlements: determining when the expense of litigation (current and future) exceeds settlement advantage gained by proceeding with litigation.

- Trial
 - Presentation
 - Lawyer's demeanor affects jury perception.
 - Boil down complex issues to bite-sized pieces that jurors can understand.
 - Cross-examinations
 - Being hostile to a juror can backfire on the lawyer by alienating jurors.
 - Prepping your own client for cross-examination involves impressing upon them the importance of listening to the opposing counsel's questions in its entirety and making sure they understand all the elements of the question before answering.
 - Opening and closing statements
 - Opening: don't overpromise on anything that counsel can't deliver, e.g. testimony from a specific witness.
 - Closing: by closing arguments, most jurors will have made up their minds. Purpose of closing is to arm the jurors who side with your client with the tools to convince other jurors during deliberations. Review the evidence, remind the jurors of the witnesses and their credibility, and reiterate the jury instructions.